"NON-REPORTABLE"

* **HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) No.460/2001

Judgment reserved on : 3rd October, 2007
Date of decision : 1st November, 2007

RAMESHWAR PRASAD GUPTA
..... PLAINTIFF

! Through : Mr.S.P.Singh, Advocate

Versus

$ M/S. ADVANTAGE AGRO INDIA LIMITED & ORS.
..... DEFENDANTS

^ Through : Nemo.

%

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

ARUNA SURESH, J.

1. Plaintiff has filed the present suit for recovery of Rs.35,16,770/- against the defendants. Briefly narrated the case of plaintiff is that defendant No.1 is a limited company and was having its office and place of business at E-157, Kalkaji, New Delhi and another branch at Post Office Road, Roorki as well as A-236, Sector – 31, Noida, U.P. The plaintiff is a retired civilian defence senior staff officer. Plaintiff

deposited / invested his savings with the defendant No.1 during the period July 1997 to May, 1998. Plaintiff deposited a sum of Rs.8,77,000/- with the defendants at Delhi vide various cheques, details of which are as under:-

Sl. No.	***Cheque No./ Cash Receipt No.***	***Date***	***Amount***
1.	260312	15.07.1997	25,000/-
2.	192127	01.08.1997	25,000/-
3.	Cash receipt No. 1363	11.10.1997	51,000/-
4.	260313	21.10.1997	1,25,000/-
5.	192128	26.11.1997	51,000/-
6.	005962	26.12.1997	51,000/-
7.	299302	10.01.1998	15,000/-
8.	985620	29.12.1997	51,000/-
9.	248982	31.12.1997	1,01,000/-
10.	005964	03.02.1998	1,01,000/-
11.	680174	26.02.1998	60,000/-
12.	199950	26.03.1998	70,000/-
13.	282181	29.04.1998	50,000/-
14.	248983	08.05.1998	1,01,000/-

2. This amount was deposited for a period of one/two years which carried interest @ 24% per annum as per the agreement and promised by the defendants. This interest comes to Rs.6,83,880/-. Plaintiff also deposited a sum of Rs.6,99,830/- at Roorkee office of the defendants vide various cheques, details of which are as under:-

Sl. No.	***Details of deposit***	***Date***	***Amount***
1.	*PDC No.0721172*	*09.04.1997*	*50,000/-*
2.	*PDC No.0723911*	*04.07.1997*	*5,000/-*
3.	*PDC No.0724871*	*24.08.1997*	*15,000/-*
4.	*PDC No.0726419*	*07.10.1997*	*1,51,000/-*
5.	*PDC No.0726430*	*16.10.1997*	*26,000/-*
6.	*PDC No.0375403*	*23.10.1997*	*36,300/-*
7.	*PDC No.036042*	*26.11.1997*	*34,840/-*
8.	*PDC No.0379201*	*26.02.1998*	*1,24,000/-*
9.	*PDC No.037926*	*14.03.1998*	*50,000/-*
10.	*PDC Collected Kalka Office*	*13.04.1998*	*49,600/-*
11.	*0721470*	*08.05.1998*	*43,400/-*
12.	*680172*	*04.08.1998*	*25.000/-*
13.	*Receipt No.2, Book No.111*	*26.02.1997*	*40,000/-*
14.	*Amount of incentive*	*20.03.1998*	*20,552/-*
15.	*Amount of incentive*	*October, 1997*	*4,963/-*

3. This amount carried interest @ 24% per annum which amounted to Rs.5,03,540/-.

4. The said deposits contained cash incentive coupon amounting to Rs.20,522/- and Rs.4,963/- for the deposits made at Roorkee. Defendants had also agreed to provide 876 cubic ft. teak wood upon the investment of the plaintiff for the deposits made in Delhi and Roorkee. Plaintiff has further claimed a sum of Rs.7,18,320/- as the price of 876 cubic ft. teak wood. However, the defendants failed to make the

payment of the deposited amount or interest thereon or even the value of the teak wood and plaintiff on visits found the office of the defendants unlocked and vacated at Delhi and Roorkee. Plaintiff served notice of demand dated 20th June, 1998 upon the defendants but the notice was returned with the remarks “left and refused”. In all plaintiff has claimed a sum of Rs.35,16,770/- from the defendants which they have failed to pay, hence the present suit.

5. The defendants were duly served by way of publication in the newspaper 'The Statesman' New Delhi edition dated 23rd July, 2004. They were served by way of affixation at their last known addresses and by way of affixation on the notice board of the court but they failed to put in appearance hence they were ordered to be proceeded ex-parte vide order dated 10th September, 2004.

6. Plaintiff has tendered his affidavit Ex.PW1/A in evidence to support his averment contained in the plaint. He also tendered in evidence documents Ex.PW1/1 to PW1/11 and documents Ex.PW1/13 to Ex.PW1/39. Plaintiff also tendered in evidence additional affidavit Ex.PW1/B and documents Ex.PW1/10 to Ex.PW1/129 already proved by way of first affidavit. The documents proved in evidence by the

plaintiff are the post dated cheques issued by the defendants to be presented after the periods specified in the agreement/affidavit and this amount included interest on each cheque. Like cheque No.260312 for Rs.25,000/- which was deposited by the plaintiff on 15th July, 1997 vide receipt dated 15th July, 1997 Ex.PW1/50. Against this defendants issued cheque No.5139592 Ex.PW1/49 dated 19th July, 1998 for Rs.31,000/- which included interest till the date on which this cheque was to be presented for encahsment.

7. Similarly another cheque No.192127 for Rs.25,000/- which was deposited by the plaintiff on 1st August, 1997 and undertaking to that effect that amount of Rs.25,000/- received by the defendants is Ex.PW1/57. Against this defendants issued cheque No.513994 Ex.PW1/54 dated 2nd August, 1998 for Rs.31,000/- which included interest till the date on which this cheque was to be presented for encahsment.

8. A sum of Rs.51,000/- which was deposited by the plaintiff vide cash receipt No.1363 on 11th October, 1997 and undertaking to that effect that amount of Rs.51,000/- received by the defendants is Ex.PW1/61. Against this defendants issued cheque No.053700 Ex.PW1/58 dated 11th

October, 1998 for Rs.63,240/- which included interest till the date on which this cheque was to be presented for encahsment.

9. Cheque No.260313 for Rs.1,25,000/- which was deposited by the plaintiff on 21st October, 1997 on the undertaking Ex.PW1/65. Against this defendants issued cheque No.517014 Ex.PW1/62 dated 24.10.1998 for Rs.1,55,000/- which included interest till the date on which this cheque was to be presented for encahsment.

10. Cheque No.192128 for Rs.51,000/- was deposited by the plaintiff on 26.11.1997 vide acknowledgment dated 26th November, 1997 Ex.PW1/37.

11. Cheque No.005962 for Rs.51,000/- was deposited by the plaintiff on 26th December, 1997 vide acknowledgment dated 26th December, 1997 Ex.PW1/26 for Rs.50,000/-. Ex.PW1/36 is also a provisional receipt dated 26th December, 1997 showing the receipt of Rs.50,000/- vide the said cheque.

12. Cheque No.299302 and cash receipt for Rs.15,000/- was deposited by the plaintiff on 10.01.1998. Ex.PW1/39 is acknowledgment of cash of Rs.5,000/-. Ex.PW1/40 is acknowledgment of cheque No.299302 dated 10th January,

1998 for Rs.5,000/- and Ex.PW1/41 is acknowledgment of cash of Rs.5,000/-.

13. Cheque No.985620 for Rs.51,000/- was deposited by the plaintiff on 29th December, 1997 vide acknowledgment Ex.PW1/27 dated 29th December, 1997.

14. Cheque No.248982 for Rs.1,01,000/- was deposited by the plaintiff on 31st December, 1997 vide acknowledgment Ex.PW1/28 dated 10th December, 1997.

15. Cheque No.005964 for Rs.1,01,000/- was deposited by the plaintiff on 3rd February, 1998 vide acknowledgment Ex.PW1/29 dated 03.02.1998.

16. Cheque No.680174 for Rs.60,000/- was deposited by the plaintiff on 26.02.1998 vide acknowledgment Ex.PW1/30 dated 27.02.1998. Ex.PW1/45 is a provisional receipt dated 27th February, 1998 showing the receipt of Rs.60,000/- vide the said cheque.

17. Cheque No.199950 for Rs.70,000/- was deposited by the plaintiff on 26th March, 1998 vide receipt Ex.PW1/46.

18. Cheque No.282181 for Rs.50,000/- was deposited by

the plaintiff on 29th April, 1998 vide receipt Ex.PW1/47.

19. Cheque No.248983 for Rs.1,01,000/- was deposited by the plaintiff on 8th May, 1998 vide receipt Ex.PW1/48 dated 18th May, 1998.

20. A sum of Rs.50,000/- was deposited by the plaintiff at Roorkee office of the defendants on 9th April, 1997 vide receipt Ex.PW1/95, provisional receipt Ex.PW1/96 against which post dated cheque No.0721172 dated 9th April, 1999 Ex.PW1/83 was issued by the defendants to the plaintiff.

21. A sum of Rs.5,000/- was deposited by the plaintiff at Roorkee office of the defendants on 4th July, 1997 vide provisional Receipt Ex.PW1/100 and receipt Ex.PW1/101 against which post dated cheque No.0723911 dated 4th July, 1998 for Rs.6200/- was issued by the defendants to the plaintiff.

22. A sum of Rs.15,000/- was deposited by the plaintiff at Roorkee office of the defendants on 24th August, 1997 vide letter/acknowledgment Ex.PW1/10 dated 27.8.1997. Ex.PW1/11 is the affidavit/undertaking to the receipt of Rs.15,000/-. Against this defendants issued PDC No.0724871 dated 27.8.1998 for Rs.18,600/- which included interest till

the date on which this cheque was to be presented for encahsment.

23. A sum of Rs.1,51,000/- was deposited by the plaintiff at Roorkee office of the defendants on 7th October, 1997 vide receipt Ex.PW1/12 dated 9th October, 2007. Ex.PW1/15 is the letter/acknowledgment dated 9th October, 1997 and Ex. PW1/16 is the undertaking to the effect that Rs.1,51,000/- received by the defendants company. Against this defendants issued PDC No.0726419 Ex.PW1/52 dated 9.10.1998 for Rs.1,87,240/- which included interest till the date on which this cheque was to be presented for encahsment.

24. A sum of Rs.26,000/- was deposited by the plaintiff at Roorkee office of the defendants on 16.10.1997 vide receipt Ex.PW1/13 dated 16.10.1997 against this defendants issued PDC No.0726430 Ex.PW1/85 dated 16.10.1998 for Rs.32,240/- which included interest till the date on which this cheque was to be presented for encahsment.

25. A sum of Rs.36,300/- was deposited by the plaintiff at Roorkee office of the defendants on 23.10.1997 vide receipt Ex.PW1/86 dated 31.10.1997. Ex.PW1/108 is the letter/acknowledgment dated 31.10.1997 and Ex.PW1/109 is

the affidavit/undertaking to the effect that Rs.36,300/- received by the defendants company. Against this defendants issued PDC No.0375403 Ex.PW1/106 dated 31.10.1998 for Rs.45,012/- which included interest till the date on which this cheque was to be presented for encahsment.

26. A sum of Rs.34,840/- was deposited by the plaintiff at Roorkee office of the defendants on 26.11.1997 vide receipt Ex.PW1/87 dated 2.12.1997. Ex.PW1/112 is the letter/acknowledgment dated 2.12.1997/26.11.1997 and Ex.PW1/113 is the affidavit/undertaking to the effect that Rs.34,840/- received by the defendants company. Against this defendants issued PDC No.0376042 Ex.PW1/110 dated 2.12.1998 for Rs.43,202/- which included interest till the date on which this cheque was to be presented for encahsment.

27. A sum of Rs.1,24,000/- was deposited by the plaintiff at Roorkee office of the defendants on 26.02.1998 vide receipt Ex.PW1/115, provisional receipt Ex.PW1/88 against which post dated cheque No.0379201 dated 26.02.1998 Ex.PW1/114 was issued by the defendants to the plaintiff which included interest till the date on which this cheque was to be presented for encahsment.

28. A sum of Rs.50,000/- was deposited by the plaintiff at Roorkee office of the defendants on 14.03.1998 vide receipt Ex.PW1/89 dated 14.03.1998. Against this defendants issued PDC No.0379226 Ex.PW1/118 dated 14.03.1999 for Rs.59,000/- which included interest till the date on which this cheque was to be presented for encahsment.

29. A sum of Rs.49,600/- was deposited by the plaintiff at Roorkee office of the defendants on 13.04.1998 against which defendants issued post dated cheque which was collected from Kalka Office; a sum of Rs.43,400/- was deposited by the plaintiff at Roorkee office of the defendants on 8.05.1998 against which defendants issued PDC No.0721470. A sum of Rs.25,400/- was deposited by the plaintiff at Roorkee office of the defendants on 4.08.1998 against which defendants issued PDC No.680172. A sum of Rs.40,000/- was deposited by the plaintiff at Roorkee office of the defendants on 26.02.1997 vide receipt No.2, Book No.111; a sum of Rs.20,552/- was deposited by the plaintiff at Roorkee office of the defendants on 20.03.1998 and a sum of Rs.4,963/- was deposited by the plaintiff at Roorkee office of the defendants in October, 1997 as amount of incentive.

30. None of these post dated cheques were presented for

encahsment for the simple reason that plaintiff found the offices of the defendants at Delhi and Roorkee unlocked and vacated. Plaintiff was unable to contact any of the defendants to get his amount refunded. Therefore, plaintiff is entitled for a sum of (Rs.8,77,000/- plus Rs.6,99,830/-) = 15,76,830/- and interest @ 24% per annum on the said amount from the date of the presentation of the cheques till the filing of the suit amounting to (Rs.6,83,880/- plus Rs.5,35,540/-) = Rs.12,19,420/-. In all plaintiff is entitled for a sum of Rs. 27,96,250/-.

31. However, plaintiff has not led any evidence to prove his claim for Rs.7,18,320/- as the value of 876 cubit ft. teak wood as claimed in the plaint nor any such agreement has been proved in evidence which may entitle the plaintiff to the value of the teak wood as prayed in para 6 of the plaint. Plaintiff has failed to prove his claim for Rs.7,18,320/- for want of evidence, therefore, he is not entitled to the amount as prayed.

32. In view of my discussion as above, I hereby pass a decree for a sum of Rs.27,96,250/- with proportionate cost in favour of the plaintiff and against the defendants. Plaintiff is further awarded interest pendente lite and future interest @

18% per annum on the principal amount of Rs.15,76,830/- from the date of the filing of the suit till its realization.

33. Decree be prepared accordingly. File be consigned to record room.

NOVEMBER 1, 2007 **ARUNA SURESH**
vk **(JUDGE)**